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## 2005 Decisions

## Opinions of the United States Court of Appeals for the Third Circuit

5-25-2005

# Pergosky v. PA Power & Light Co

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No: 04-1855

JOHN PERGOSKY,

Appellant

v.

PENNSYLVANIA POWER & LIGHT COMPANY;  
RETIREMENT PLAN OF PENNSYLVANIA POWER & LIGHT COMPANY

On Appeal from the United States District Court  
for the Eastern District of Pennsylvania  
D.C. Civil No. 03-cv-06549  
District Judge: Honorable Franklin S. Van Antwerpen

Submitted Pursuant to Third Circuit LAR 34.1(a)  
March 8, 2005  
BEFORE: NYGAARD, McKEE & RENDELL, Circuit Judges

(Filed: May 25, 2005)

OPINION

PER CURIAM

Plaintiff employee asks us to review the District Court's grant of the employer's motion to dismiss plaintiff's suit for employee benefits under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.* We will affirm.

Inasmuch as we are writing only for the parties we need not set forth the background of this dispute except insofar as may be helpful to our brief discussion. The

District Court concluded that the instant suit was barred by the doctrine of collateral estoppel based upon plaintiff's prior suit against the defendant under the Age Discrimination and Employment Act and the settlement agreement that terminated that litigation. The District Court has filed a very thoughtful and thorough Memorandum and Order dated March 2, 2004, wherein the court explains why the doctrine of collateral estoppel precludes defendant from raising the instant claims. We will affirm the District Court's dismissal substantially for the reasons set forth in the Memorandum and Order.